(1982) 02 BOM CK 0029

In the Bombay High Court

Case No : Miscellaneous Petition No. 1817 of 1978

Shree Sitaram Mills Limited — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 23-02-1982

Acts Referred:

Citation : (1990) 47 ELT 255

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Judgement

1. The petitioners in this case are Shree Sitaram Mills Ltd. and in the petition they have impugned the decisions respectively given by respondents 3, 2 and 1 holding that certain fabric manufactured by the petitioners is furnishing fabric as distinguished from the petitioners'' contention that the said fabric being Sort No. 7429 manufactured by them was dress material and not furnishing fabric. If it is basically dress material then it would be classified under Item 19I(2) and not under Item 19I(1) as the Department has purported to classify the said fabric. If the petitioners'' contentions were to be upheld then the duty leviable on the fabric under Item 19I(2) would depend upon the count and as the count would make it fall within sub-head (e) the excise duty payable for the relevant time was 60 paise per sq. mtr. plus additional duty of 4 paise per sq. mtr. Under Item 19I(1), however, the duty chargeable was 15 per cent ad valorem plus additional duty of 2 1/2 percent.

2. Several contentions have been raised by the petitioners against three impugned orders - one by the Assistant Collector initially, thereafter in appeal by the Appellate Collector (Ex.''E'') at page 39 and finally in revision by the Union of India. I find a slight confusion in the revisional orders. It would appear that the two Secretaries to the Government of India who had heard the revision originally differed and thereafter the third Secretary who had not heard the party agreed with the Secretary who had held against the petitioners. It would be clear that before the final decision was taken by the third Secretary some sort of hearing

was required to be given to the petitioners to explain their case in detail. There is no difficulty whatsoever in quashing the order in revision but I found the appellate order also to be extremely sketchy, cursory and therefore totally unsatisfactory.

3. This is the appellate order passed by the Appellate Collector, Central Excise, Bombay. Copy of the said order is annexed as exhibit ''E'' to the petition. The order takes slightly over two typewritten pages. The effective order only consists of the following five lines :-

"I have gone through the records of the case and considered all arguments raised by the appellants. The cloth looks like furnishing cloth. I, therefore, do not see any reason to interfere with the order passed by the Assistant Collector. The appeal petition is, therefore, rejected."

These are quasi-judicial proceedings and this is the usual useless non-judicial order passed by the Appellate Authority. It records only that the Appellate Collector found that the cloth looks like furnishing cloth and therefore decided that it was furnishing cloth rejecting all the several contentions of the appellants. Surely, this is not the proper method or the manner in which appellate powers are to be exercised. Such orders proclaim the desirability of an Appellate Tribunal for Customs and Excise matters the need for which has been proclaimed but as regards which steps are being taken rather slowly.

4. It would be appropriate under the circumstances to quash both the orders exhibits ''E'' and ''G'' collectively and remand back the matter for proper disposal to the appellate authority which has to be done after properly appreciating, understanding and dealing with the respective rival contentions. It may be stated at this juncture that one of the contentions is in respect of another variety of cloth Sort No. 7444 having identical warp and waft strength. The petitioners'' contention in respect of this fabric has been upheld and the same was held to be basically dress material and not furnishing fabric. In the result, Rule is made absolute in terms of prayer (a) but restricted to the appellate order of February 1975 (exhibit ''E'' to the petition) and the revisional order (exhibit ''G'' to the petition). This will mean that proceedings will start from the appellate stage a new and the appellate decision is required to be taken after hearing the petitioners. Parties are directed to bear their own costs.

5. At the appellate stage, it is indicated that the petitioners want to lead further evidence. For this purpose they must made necessary application to the appellate authority which he will deal with on merits. As the original impugned order of the Assistant Collector is of 1972, it is desirable that the appellate authority will dispose of the appeal as expeditiously as possible under the circumstances and preferably on or before 15th June, 1982.